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*capacity as the Director of the California*  
8 *Department of Public Health*

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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13 **FREE NOW FOUNDATION, BRAVE AND**  
14 **FREE SANTA CRUZ, D.Q., by his Next**  
15 **Friend, Alix Mayer, A.R., by his Next**  
16 **Friend, Alix Mayer, T.E., by his Next**  
17 **Friend, Kathleen Lynch, and N.D., by his**  
18 **Next Friend, Kathleen Lynch**

19 Plaintiffs,

20 v.

21 **ERICA PAN, in her Official Capacity as the**  
22 **Director of the California Department of**  
23 **Public Health,**

24 Defendant.  
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2:24-cv-03523-DJC-SCR

**DEFENDANT CDPH'S OBJECTION TO  
PLAINTIFFS' NOTICE OF RECENT  
DECISION**

Courtroom: 7  
Judge: The Hon. Daniel J. Calabretta  
Trial Date: Not Yet Set  
Action Filed: December 16, 2024

1 Defendant Dr. Erica Pan, in her official capacity as the Director of the California  
2 Department of Public Health, hereby submits this objection to the Notice of Recent Decision filed  
3 by Plaintiffs. ECF No. 49.

4 On June 27, 2025, Plaintiffs filed a Notice of Recent Decision in support of their Motion for  
5 Preliminary Injunction to alert the court of the U.S. Supreme Court's decision in *Mahmoud v.*  
6 *Taylor*, --- U.S.--- (2025). ECF No. 49. Pursuant to Local Rule 230, subdivision (m), "[a]fter a  
7 reply is filed, no additional memoranda, papers, or other materials may be filed without prior  
8 Court approval." Although a party may file "a notice of supplemental authority to bring the  
9 Court's attention to a relevant judicial opinion issued after the date that party's reply was filed[.]"  
10 the notice may only contain a "citation to the new authority" and cannot contain "additional  
11 argument on the motion." L.R. 230, subd. (m)(2).

12 Plaintiffs' Notice of Recent Decision improperly includes additional argument and goes  
13 beyond simply citing to a new authority. Pages 2 through 3 contain various holdings and excerpts  
14 from the *Mahmoud v. Taylor* opinion, which Plaintiffs argue "are relevant to this case." ECF No.  
15 49 at 2. Pages 3 through 4 contain further argument for supposed conclusions that were not even  
16 mentioned or contemplated by the Supreme Court in the *Mahmoud* decision. Anything apart  
17 from the citation of supplemental authority should be stricken.

18 Further, Plaintiffs mischaracterize the case to falsely suggest it is actually applicable here.  
19 In *Mahmoud v. Taylor*, the Supreme Court analyzed whether the parent plaintiffs are entitled to a  
20 preliminary injunction where a school board introduces "LGBTQ+-inclusive" reading into its  
21 school curriculum, such instruction interferes with some parents' religious beliefs, and the school  
22 board does not allow those parents to opt out of such instruction for their children. *Mahmoud*,  
23 2025 WL 1773627, at \*5.

24 Here, none of Plaintiffs' claims concern the First Amendment's Free Exercise Clause or  
25 any purported religious rights. See ECF No. 39 (Second Amended Complaint). Similarly, the  
26 *Mahmoud* opinion contains no mention of school immunization, public health and safety, or  
27 substantive due process rights. Yet, Plaintiffs argue that "harms to the child's religious beliefs  
28 over the parents' objections" should be regarded the same as "the infliction of physical harms on

1 those children over the objection of their parents,” and that the *Mahmoud* decision “foretells that  
2 the Court would likely find *Jacobson v. Massachusetts* to be not applicable” to Plaintiffs’ claims.  
3 ECF No. 49 at 3-4. Plaintiffs further argue, without any factual or legal authority, that “Congress  
4 has determined that California’s mandated immunizations” “imperil the child’s health and very  
5 life.” *Id.* at 3.

6 Plaintiffs have not sought leave from the court to file a sur-reply. Plaintiffs’ Notice of  
7 Recent Decision fails to comply with Local Rule 230, subdivision (m)(2), and improperly  
8 includes additional argument in support of their Motion for Preliminary Injunction. Defendant  
9 respectfully requests that the court strike Plaintiffs’ Notice of Recent Decision.

10 Dated: July 2, 2025

Respectfully submitted,

11  
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13 JENNIFER G. PERKELL  
Supervising Deputy Attorney General

14 /s/ Jacquelyn Young

15 JACQUELYN YOUNG  
16 KATHERINE J. GRAINGER  
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17 Attorneys for CDPH Director Erica Pan

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## CERTIFICATE OF SERVICE

Case Name: Free Now, et al. v. Aragon, et al.

Case No.: 2:24-cv-03523-DJC-SCR

I hereby certify that on July 2, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT CDPH'S OBJECTION TO PLAINTIFFS' NOTICE OF RECENT DECISION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 2, 2025, at Los Angeles, California.

Kevin Carballo

Declarant

*Kevin Carballo*

Signature